

TOWN COUNCIL SPECIAL MEETING - THURSDAY EVENING - JANUARY 26, 2012

PRESENT: Marshall, Barboza, Teixeira and Parella (arrived at 7:20 o'clock PM)

ALSO PRESENT: Andrew M. Teitz, Esq., Assistant Town Solicitor

ABSENT: Herreshoff

The Council met in special session on Thursday evening, January 26, 2012 in the Town Hall, Council Chambers, beginning at 7:08 o'clock PM, Council Chairman Marshall presiding:

***AMEND ITEM** 1. Interview/Appointment - Conservation Commission (term to expire in December 2014)

***AMEND ITEM** a. Raul Abreu, 4 Christine Court - interest/appointment

Mr. Abreu informed the Council that he has been a resident of Bristol since 1993 and that he would like to become a more active participant. He added that he would like to volunteer on a Town board and did not specifically select the Conservation Commission but rather it was recommended to him.

The Clerk reported that he met initially with Mr. Abreu and suggested that Mr. Abreu might be interested in the Conservation Commission after listening to him. The Clerk informed the Council that he also suggested that Mr. Abreu might speak to Raymond Payson, Conservation Commission Chairman with Mr. Abreu explaining that he has not yet contacted Mr. Payson but will likely do so in the near future.

Council Chairman Marshall noted that the Conservation Commission is an active group and also explained that the Commission's effort toward opening some of the Town's nature trails was the subject of a recent newspaper article.

Councilman Barboza explained that the Town's Comprehensive Plan considers open space a priority and that the Conservation Commission is often part of the Town's open space decisions.

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Council Chairman Marshall stated that he appreciates Mr. Abreu's willingness to serve.

Councilman Teixeira agreed with Council Chairman Marshall and thanked Mr. Abreu for expressing interest in community service.

Council Chairman Marshall informed those present that he expects the Council to make the Conservation Commission appointment on February 1, 2012. He suggested that Mr. Abreu should call Mr. Payson and confirm his interest back to the Clerk.

2. Town Solicitor Ursillo re Amendments to Bristol County Water Authority Bylaws
3. Town Solicitor Ursillo re Amendments to Bristol County Water Authority Enabling Legislation

(Enabling Legislation - discussion and action)

Assistant Solicitor Teitz explained that the Barrington Town Council reviewed the document prepared by Warren Town Solicitor DeSisto's office (Stephanie Federico) and voted on the options provided. He added that these are noted on the color-coded document.

Assistant Solicitor Teitz also explained that the Barrington Town Council suggests certain changes to the BCWA Bylaws these being needed due to the proposed changes to the enabling legislation.

Frank J. Sylvia, a member of the BCWA Board of Directors, asked to know if the changes to the Bylaws were available since he had not yet seen these.

Council Chairman Marshall asked the Clerk to make copies of the documents and to provide these to the members of the audience present.

Assistant Solicitor Teitz suggested that the Council should consider the most recent version of the documents. He added that he provided a copy of same to the Warren Town Clerk.

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A discussion ensued as to if and when the three Councils would meet as a body to consider these changes together.

Council Chairman Marshall stated that he is of the opinion that the three Councils should consider these independently and perhaps subsequently consider them together.

Councilman Barboza asked to know if the Barrington Town Council approved the changes on a split vote of 3-2.

Carolyn Medina, a member of the Ad-Hoc Committee, explained that the Committee's report from November, 2011 contained recommendations. She suggested that the Council should consider these along with the Barrington version of same.

Assistant Solicitor Teitz stated that the Barrington Town Council was unanimous in its consideration of most of the proposed changes and that the split-vote was concerning the matter of term limits. He added that the Council took an "overall vote" on all of the changes as approved and that the overall vote was unanimous.

Councilwoman Parella arrived at this point in the meeting (7:20 o'clock PM).

Assistant Solicitor Teitz also reported that the Barrington Town Council agreed to a voting majority of six (6) members with the proviso that at least one Director from each of the three towns must be in the majority.

Peter Hewett asked to know if the Council was presently considering the initial proposal as recommended by the Ad-Hoc Committee.

Assistant Solicitor Teitz suggested that the Barrington version would "narrow the issue" since the Barrington Council was already in agreement with these. He added that the Council, could if it so chooses, make its own independent recommendations.

Councilman Teixeira noted that the version prepared by Attorney Federico appears to "streamline" the recommendations of the Ad-Hoc Committee.

Assistant Solicitor Teitz reported that Attorney Federico's version did streamline the recommendations. He added that

some of the recommendations are "technical" and some are "policy."

Councilman Teixeira asked to know if the plan is to ask the General Assembly to replace the current legislation adding that there are now two sets of legislation with Assistant Solicitor Teitz responding that the plan would be to replace both of these.

Council Chairman Marshall suggested that the BCWA directors should respond to some of these recommendations since the directors have practical experience with same.

Assistant Solicitor Teitz suggested that the Council might consider the issues relating to the enabling legislation and not necessarily the bylaws since some of the bylaws must change if the enabling legislation changes. He added that the BCWA directors would be responsible to change the bylaws.

Council Chairman Marshall asked to know if the proposed changes to the enabling legislation might be considered as "housekeeping" with Councilwoman Parella noting that some of the proposed changes appear to be substantive.

Assistant Solicitor Teitz suggested that the participants should number the pages of the documents. The pages of the enabling legislation document (entitled "Chapter 102") and also the bylaws (entitled "Bristol County Water Authority By-Laws") were individually numbered 1 through 6.

Assistant Solicitor Teitz noted that the first substantive change appears on Page 3 of the "Chapter 102" document, at subsection (13).

A discussion ensued regarding the requirement to have two-thirds majority to amend the bylaws.

Mr. Sylvia informed the Council that he believes it was "not a big thing" to change the required majority from seven (7) to six (6) members since the present directors seem to have a good working relationship.

Paul Bishop, a member of the Water Authority Board of Directors, suggested that the Chapter 102 document might be amended to read six directors versus two-thirds.

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The Council, by consensus, agreed to make the change to read six directors.

In Section 7, subsection (a), the Council agreed, by consensus that the directors would not be chosen based upon political affiliation.

In Section 7, subsection (b), the Council agreed, by consensus, to the use of the term "chair" instead of "chairman."

A discussion ensued regarding the removal of a director (subsection (a) last sentence). Councilman Barboza stated that he was of the opinion that the removal of a director should require more than a simple majority of the Town Council.

Assistant Solicitor Teitz explained that Barrington "was ok" with the language appearing in the document. He added that he believes that the Councils would not act "willy-nilly" regarding this matter. He added that the Council should likely convene a hearing regarding the matter should there be a desire to remove a director.

Councilwoman Parella asked to know if the Council has the right to remove an appointee in the absence of any language concerning same with Assistant Solicitor Teitz responding that the Barrington Council appears to believe this to be possible.

Councilwoman Parella expressed concern that were the language to be too general it may be easy "to let politics into the mix." She added that she believes that there should be some criteria established for removal.

Assistant Solicitor Teitz stated that this would be a "policy choice" and not necessarily something for the enabling legislation.

Councilman Teixeira stated that the provision originated at the legislation sub-committee level and the sub-committee recommended that the Council might set the expectations for the directors.

Raymond F. Palmieri, Sr., a member of the sub-committee, noted that the current enabling legislation has no mechanism for the removal of a director.

Councilwoman Parella asked to know if the sub-committee anticipated that the removal criteria would be "across the board" or "town specific" with Ms. Medina, reading from the sub-committee's November recommendations and responding that the sub-committee anticipated that the "local bodies" would set individual criteria to match their individual expectations for their appointed directors. She added that this would constitute a type of "job description."

A discussion ensued regarding director removal with Councilman Barboza stating that he was "comfortable" with the section as written. He added that during his long tenure on the Council, the Council has not ever removed any appointee.

Councilwoman Parella stated that there should be something in the bylaws to establish minimum director criteria.

Assistant Solicitor Teitz suggested that the Council may wish to require a super-majority to remove a director.

Mr. Sylvia suggested that the Council may wish to adopt an ordinance to allow for a process to remove any one of its board, commission or committee appointees.

Councilwoman Parella expressed concern that board members might be politically removed from office due to their stand on "contentious" issues. She added that a Council may find a director's removal as "expedient" to suppress public outcry even if the removal is not necessarily the best action overall. She again noted that any appointed individual may not be removed for cause.

Assistant Solicitor Teitz reminded the Council that most of its appointees serve in "quasi-judicial" or "advisory" capacities. He added that the BCWA is different in that it is "proprietary" since it is running a business and managing a Town asset.

Councilwoman Parella again expressed concern that a Town Council may wish to remove a director solely for political expediency.

Councilman Barboza stated that he would prefer if the removal was by "super-majority" rather than "simple majority."

Mr. Hewett suggested that the criterion for removal should be solely "loss of trust and confidence."

Mr. Palmieri stated that the sub-committee "hoped" that the three Councils would each develop its expectations for its individual directors. He added that the Councils would then describe these expectations to candidates prior to their appointment.

Councilwoman Parella stated that removal should only be for an egregious act.

Assistant Solicitor Teitz stated that the Council could add "without cause" to the removal provision.

Ms. Medina stated that she understood Councilwoman Parella's point. She added that the Committee did not anticipate removal for no cause and that it intended for the Councils to establish some type of performance standard.

Councilwoman Parella stated that perhaps the directors might be made to be accountable to a specific job-description or something similar.

Councilman Barboza asked to know if Council members would agree to removal based upon a super-majority vote with Councilwoman Parella stating that she would support that idea.

Mr. Hewett stated that he did not believe criteria for removal is necessary. He added that since the Town Council is responsible directly to the electorate it should have the authority to remove its appointees.

Councilman Barboza suggested that the Council should agree to the super-majority provision to remove a director since this adds an element of caution to the decision.

The Council, by consensus, agreed to the super-majority to remove a director.

The Council next discussed Section 7, subsection (a), relating to term limits.

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Councilman Barboza noted that Barrington voted 3-2 to maintain the status-quo.

Council Chairman Marshall stated that a removal clause should eliminate the need for term limits.

Councilman Barboza stated that term limits sacrifices those who may have institutional memory and experience valuable to the board.

Councilman Barboza suggested that the terms should be left as-is with Councilman Teixeira stating that he disagreed with Councilman Barboza since he is concerned that board members become "entrenched."

Councilwoman Parella stated that she was opposed to Option 2. She further stated that she would prefer if the terms would be left alone or at least the members would be allowed to return after some hiatus.

Councilwoman Parella added that the first term of any appointee may serve as a "learning curve."

Ms. Medina stated that she prefers term limits in order to allow for new people to become involved and bring their fresh ideas.

Mr. Bishop noted that there are presently three members who have less than six months experience.

Councilwoman Parella suggested that any change to include term limits should not be retroactive. She added that staggered terms should also be factored into a new term limit rule.

Mr. Palmieri stated that he believes that the parties may be "losing sight" on the role of the Board of Directors. He added that it is necessary for employees to provide the "institutional memory" but that the directors should be guiding the financial issues. He noted that the sub-committee's intention was to "push" day-to-day operations responsibility toward employees and away from directors.

Mr. Sylvia stated that he believes that the authority of the directors and employees is clearly delineated. He noted that the former Executive Director was "not fully forth-with" with the directors or the Town Councils. He

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added that the current Chairman of the Board of Directors "has time and ability" and went to meetings. He added that the Board of Directors was "more enlightened" via Mr. Jannitto.

Mr. Sylvia informed the Council that the situation prompted the need to have a board member involved and that the practice will likely not continue in the future. He stated that the new Executive Director will be expected to communicate more effectively with the board.

Mr. Sylvia suggested that should the Councils decide to make a change to the enabling legislation to delineate responsibly it would be acceptable to him but he added that there may be good reason to have the Board Chairman more directly involved in the future, but only out of necessity.

Councilman Teixeira asked to know Mr. Sylvia's opinion of term limits with Mr. Sylvia responding that he is the last remaining "old guy" and that he believes that his experience is valuable to the Authority. He added that he "can live with" a twelve (12) year term.

Councilman Teixeira suggested that the term limit provision should not be retroactive. He added that the rationale for the term limits, as proposed by the sub-committee, was to encourage "fresh ideas."

Councilwoman Parella noted that if the term limit provision would not be retroactive then Mr. Sylvia would be eligible for an additional twelve years on the Authority.

Councilman Barboza noted that the East Bay Mental Health Board has term limits.

The Council, by consensus, agreed to Option 1.

Assistant Solicitor Teitz suggested, with the Council in agreement, that the Council should include the phrase "with no retroactive whatsoever" to the provision.

Regarding subsection (b), the Council agreed, by consensus, to have this section remain as-is.

A discussion ensued regarding term limits for the board chair; subsection (c). Councilman Teixeira objected to having this subsection remain as-is.

Councilwoman Parella stated that she would be concerned if the board could not keep a chairman in place if the person was effective and also if the board wished for he or she to continue. She added that occasionally the remaining members do not wish to have the responsibility of board chairman.

Barboza/Parella - Voted to accept Option 3. Voting in favor of this motion were Council Chairman Marshall, Councilman Barboza, and Councilwoman Parella. Voting opposed was Councilman Teixeira.

Regarding subsection (d), the Council agreed, by consensus, to action requiring six (6) affirmative votes with at least one (1) affirmative vote from each town.

Assistant Solicitor Teitz noted Page 6, Section 7, subsection (h); explaining that this subsection was amended to include reference to applicable State law. He further explained that, with Council concurrence, he would add the appropriate title and section of these laws.

The Council, by consensus, agreed to this amendment.

Regarding subsection (k), it was noted that Barrington prefers Option 1.

Council Chairman Marshall asked to know if the Water Authority is advertising at present with Mr. Sylvia responding that the Authority now advertises rate hearings. He added that these are also advertised on the BCWA website and also via the Secretary of State's website. Mr. Sylvia added that the Authority "goes the extra mile" when rate increases are proposed.

Barboza/Parella - Voted unanimously to accept Option 1 for subsection (k).

Mr. Palmieri explained that the purpose of the sub-committee's recommendation is to assure that citizens will

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see the notice of hearing. He added that not everyone regularly consults the Secretary of State's website.

Regarding subsection (1), the Council agreed to the proposed changes by consensus.

Mr. Hewett expressed concern that the hourly rate of the Water Authority's legal counsel is \$375 an hour. It was suggested that the Water Authority should be asked this question.

Mr. Hewett also suggested that the word "individual" should be changed to "applicant." The Council, by consensus, agreed to this change.

Considering the overall amendments as discussed above:

Barboza/Parella - Voted
unanimously to approve these
amendments.

Prior to the vote taken, Ms. Medina asked to know if both the 1970 and 1981 versions of the enabling legislation will be proposed for amendment with Assistant Solicitor Teitz responding that the bill will likely ask that both versions be repealed in their entirety and replaced with the new version.

(Bylaws - discussion and action)

Council Chairman Marshall asked to know if the Council should now consider the bylaws with Assistant Solicitor Teitz responding that the Authority has the mechanism to amend the bylaws.

It was noted that the Barrington Town Council suggests amendment to the bylaws to prevent dual office holding (Article I, Section 1).

Ms. Medina informed the Council that the sub-committee did not specifically recommend this amendment.

Councilman Teixeira asked to know if the Authority Board of Directors needs a "treasurer" with Mr. Sylvia explaining that the position is essentially "ceremonial." Assistant Solicitor Teitz stated that corporate regulations require the position of treasurer.

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Councilwoman Parella stated that she had no strong feeling about the dual office holding issue but also that it may be advisable to "spread out" the officers.

The Council agreed, by consensus, to the amendments to Section 1.

The Council agreed, by consensus, to the amendments to Section 2.

The Council agreed, by consensus, to the amendments to Section 3 adding the words (underlined) "The responsibility for daily operations...."

Regarding Article II (Meetings):

The Council agreed, by consensus, to keep Section 1 as-is.

The Council agreed, by consensus, to the amendments to Section 2.

It was noted that portions of Section 3 and 4 were missing from the document. Assistant Solicitor Teitz agreed to provide these.

The Council agreed, by consensus, to the amendments to Section 7.

The Council agreed, by consensus, to the amendments to Section 8 with Assistant Solicitor Teitz agreeing to add Chapter and Title to the Section.

Regarding Article V (Conflicts of Interest):

Assistant Solicitor Teitz noted that this amendment considers compliance to the State Ethics regulations.

The Council, by consensus agreed to the amendment to Article V.

The Council, by consensus agreed to the amendment to Article VII.

The Council, by consensus agreed to the amendment to Article IX.

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Mr. Hewett asked to know if Article I, Section 2 was "procedural" with Assistant Solicitor Teitz responding that "most do it."

Regarding the bylaws revisions in general:

Barboza/Teixeira - Voted
unanimously to approve amendments
to the bylaws as noted above.

4. Adjournment

There being no further business, upon a motion by Councilman Barboza, seconded by Councilman Teixeira and voted unanimously, the Chairman declared this meeting to be adjourned at 9:20 o'clock PM.

Louis P. Cirillo, CMC, Council Clerk